

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-SD-004
)	
SpectraSite Communications, Inc.)	NAL/Acct. No. 200232940004
)	
Cary, North Carolina)	FRN # 0006-1525-73

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 18, 2002

Released: April 25, 2002

By the Commission: Commissioner Abernathy issuing a statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find SpectraSite Communications, Inc., (“SpectraSite”), Cary, North Carolina, apparently liable for a forfeiture in the amount of one hundred and eleven thousand dollars (\$111,000) for six willful and repeated violations of Sections 303(q) of the Communications Act of 1934, as amended (“Act”),¹ and Part 17 of the Commission’s Rules (“Rules”) relating to antenna structure construction, marking, and lighting.²

2. In particular, we find SpectraSite apparently liable for one failure to register an existing antenna structure (Section 17.4(a)(2)); two failures to post the Antenna Structure Registration (“ASR”) number in a conspicuous location so that it is visible near the base of the antenna structure (Section 17.4(g)); and three failures to replace or repair antenna structure lights, automatic indicators, automatic controls, and alarm systems as soon as practicable (Section 17.56(a)).³ We find that during the period of April 24, 2001 through February 1, 2002, SpectraSite failed to comply with one of these requirements in six separate locations throughout the country.

3. The apparent violations here come approximately within a year of prior forfeitures against SpectraSite for similar violations.⁴ Our rules relating to tower lighting and marking are important to public safety. SpectraSite’s apparent inability to comply with these rules on a consistent basis is very troubling. In light of these circumstances, we have tripled the base forfeiture amounts for these violations. Future violations will result in even more serious enforcement action.

II. BACKGROUND

4. The Commission’s antenna structure construction, marking and lighting requirements operate in concert with Federal Aviation Administration (“FAA”) regulations to ensure that antenna structures do not present hazards to air navigation. Generally, our rules require that antenna structures

¹ 47 U.S.C. § 303(q) (antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission).

² 47 C.F.R. § 17.1 *et seq.*

³ 47 C.F.R. §§ 17.4(a)(2), 17.4(g) and 17.56(a).

⁴ See ¶ 6 and notes 12-13, *infra*.

located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety.⁵ We require antenna structure owners to register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁶ The rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since 1996.⁷ We have repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to our rules must be registered *immediately* or the owners will face a monetary forfeiture or other enforcement action.⁸

5. Because of the substantial public safety issues involved, we further require antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly.⁹ Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators, and control and alarm systems as soon as practicable.¹⁰ Additionally, antenna structure owners are required immediately to notify the FAA when major antenna structure lights are inoperative and cannot be repaired within 30 minutes.¹¹ The FAA then issues Notices to Airmen (“NOTAM”) for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage.

6. Commission field agents regularly inspect antenna structures to determine compliance with the Commission’s antenna structure construction, marking and lighting requirements and promptly respond to complaints of unlit towers. The FAA also routinely notifies Commission field offices when owners fail to either report that lights have been repaired within 15 days or request that a NOTAM be extended. During routine inspections of antenna structures owned by SpectraSite, from July 21, 2000 to October 27, 2000, Commission Field agents discovered four antenna structures that did not have the ASR numbers posted as required and three antenna structures for which SpectraSite failed to notify the Commission of ownership changes. These violations resulted in a \$17,000 monetary forfeiture against SpectraSite issued on March 19, 2001, which SpectraSite paid in full.¹² On March 5, 2001, Commission field agents discovered an unlit SpectraSite tower near Ocala, Florida. This violation of the antenna structure lighting requirements resulted in a \$10,000 monetary forfeiture against SpectraSite issued on October 3, 2001, which SpectraSite paid in full.¹³ In the course of ongoing routine inspections and

⁵ 47 C.F.R. § 17.21.

⁶ 47 C.F.R. § 17.4.

⁷ Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998, and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995).

⁸ Subsequent to the expiration of the filing period, the Commission staff issued a *Public Notice* warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice*, “No-Tolerance Policy Adopted for Unregistered Antenna Structures,” 1999 WL 10060 (WTB rel. Jan. 13, 1999). In addition, in June and July 1999, the Wireless Telecommunications Bureau sent letters to licensees informing them that the Commission had no valid registration for their antenna site and that owners and, to the extent they were liable, tenants could face monetary forfeitures for antenna structures that remained unregistered.

⁹ 47 C.F.R. § 17.47.

¹⁰ 47 C.F. R. § 17.56.

¹¹ 47 C.F.R. § 17.48.

¹² *SpectraSite Communications, Inc.*, 16 FCC Rcd 809 (Enf. Bur. 2001), *forfeiture ordered*, 16 FCC Rcd 6773 (Enf. Bur. 2001).

¹³ *SpectraSite Communications, Inc.*, (Enf. Bur., Tampa Office rel. Apr. 25, 2001), *forfeiture ordered*, 16 FCC Rcd 17668 (Enf. Bur. 2001).

investigations, Commission field agents have continued to uncover new violations of the Commission's antenna structure requirements by SpectraSite, and in the past year have issued a number of Notices of Violation ("NOVs") for such violations. A brief description of the most serious of these safety-related violations, which are the subject of this *NAL*, follows.

Oakdale, California – File No. EB-01-SF-172

7. On April 24, 2001, an agent from the Commission's San Francisco, California Field Office ("San Francisco Office") inspected an antenna structure located at 10601 Pioneer Avenue, Oakdale, California. The agent observed no ASR number posted at the site. A search of Commission records revealed that the structure was registered to SpectraSite (ASR No. 1208406). On May 4, 2001, the San Francisco Office issued an NOV citing SpectraSite for failure to post the antenna structure's ASR number in violation of Section 17.4(g) of the Rules. In its May 18, 2001, response to the NOV, SpectraSite replied that it had immediately posted a temporary sign at the site and had installed a permanent ASR number sign there on May 9, 2001.

Badin, North Carolina – File No. EB-01-NF-252

8. On or about September 21, 2001, the FAA notified the Commission's Enforcement Bureau that an antenna structure owned by SpectraSite which is located at or near Badin, North Carolina might not be registered, among other things. Subsequent contacts between the FAA, a Resident Agent from the Commission's Norfolk, Virginia Resident Agent Office, and SpectraSite revealed that the antenna structure was subject to Part 17 of the Rules and, accordingly, needed to be registered. On October 9, 2001, the Resident Agent issued an NOV citing SpectraSite for failure to register the antenna structure in violation of Section 17.4(a)(2) of the Rules. In its two responses to the NOV, SpectraSite details its remedial efforts, which culminated in its registration of the antenna structure on November 8, 2001.¹⁴

Lewiston, Idaho – File No. EB-01-ST-329

9. On November 19, 2001, the FAA notified the Commission's Seattle, Washington Field Office ("Seattle Office") that a NOTAM was open for an antenna structure owned by SpectraSite which is located at 700 Lindsey Creek Road, Lewiston, Idaho (ASR No. 1227064). An agent's investigation into the referral revealed that since October 1, 2001, the FAA had issued three NOTAMs for problems with the antenna structure's lighting. On January 18, 2002, the Seattle Office issued an NOV citing SpectraSite for failure to replace or repair the antenna structure's lights, automatic indicators, automatic controls, and alarms systems as soon as practicable in violation of Section 17.56(a) of the Rules. In its response to the NOV, SpectraSite states that its antenna structure light monitoring company opened the NOTAMs after receiving successive notifications of tower light outages via an electronic monitoring device. According to SpectraSite, it inspected the equipment and found that the electronic monitoring device had a faulty controller. SpectraSite then claims that it replaced the electronic monitoring device's faulty controller and closed the outstanding NOTAM on January 17, 2002, but provides no reason for its delay in replacing the faulty controller.

Blackfoot, Idaho – File No. EB-01-ST-343

10. On December 10, 2001, the FAA notified the Seattle Office that a NOTAM was open for an antenna structure owned by SpectraSite which is located at or near Blackfoot, Idaho (ASR No. 1228118). An agent's investigation into the referral revealed that since November 1, 2001, the FAA had issued multiple NOTAMs for problems with the antenna structure's lighting. On January 18, 2002, the

¹⁴ ASR number 1230615.

Seattle Office issued an NOV citing SpectraSite for failure to replace or repair the antenna structure's lights, automatic indicators, automatic controls, and alarms systems as soon as practicable in violation of Section 17.56(a) of the Rules. In its response to the NOV, SpectraSite states that a "fuse was wired incorrectly causing a white strobe alarm." SpectraSite then claims that it would repair the lighting system by February 1, 2002, and close the outstanding NOTAM, but provides no reason for its delay in repairing the lighting system.

Eugene, Oregon – File No. EB-02-PO-005

11. On December 17, 2001, the FAA notified the Commission's Portland, Oregon Resident Agent Office that a NOTAM was open for an antenna structure owned by SpectraSite which is located at 29790 Kelso Street, Eugene, Oregon (ASR No. 1218058). A Resident Agent's investigation into the referral revealed that since October 29, 2001, the FAA had issued five NOTAMs for problems with the antenna structure's lighting. On January 11, 2002, the Resident Agent issued an NOV citing SpectraSite for failure to replace or repair the antenna structure's lights, automatic indicators, automatic controls, and alarms systems as soon as practicable in violation of Section 17.56(a) of the Rules. In its response to the NOV, SpectraSite states that an apparent equipment malfunction resulted in the successive NOTAMs. SpectraSite then claims that it repaired the equipment and closed the outstanding NOTAM on January 10, 2002, but provides no reason for its delay in repairing the equipment.

Portland, Oregon – File No. EB-01-PO-301

12. On December 17, 2001, a Resident Agent from the Enforcement Bureau's Portland, Oregon, Resident Agent Office inspected an antenna structure located at or near Portland, Oregon. The Resident Agent observed no ASR number posted at the site. A search of Commission records revealed the structure was registered to SpectraSite (ASR No. 1230865). On December 18, 2001, the Resident Agent issued an NOV citing SpectraSite for failure to post the antenna structure's ASR number in violation of Section 17.4(g) of the Rules. In its response to the NOV, SpectraSite stated that it posted the ASR number at the site on January 9, 2002.

III. DISCUSSION

13. Based on the evidence before us, we find that SpectraSite has apparently failed to register an antenna structure in willful¹⁵ violation of Section 17.4(a)(2); failed to post an ASR number in a conspicuous location so that it is readily visible near the base of the antenna structure in two instances in willful violation of Section 17.4(g); and failed to replace or repair three antenna structures' lights, automatic indicators, automatic controls, and alarms systems as soon as practicable in three instances in willful violation of Section 17.56(a). We also find that SpectraSite has apparently failed to maintain the lighting of its antenna structures as required by our rules in willful violation of Section 303(q) of the Act. We note that these violations were continuing and thus also repeated.¹⁶

14. Section 503(b) of the Act,¹⁷ authorizes the Commission to assess a forfeiture for each

¹⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁶ See *id.* at 4388; as defined in the Act, the term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁷ 47 U.S.C. § 503(b).

willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁸

15. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)¹⁹ and Section 1.80 of the Rules,²⁰ the base forfeiture amount for failure to comply with prescribed lighting and marking requirements is \$10,000, and the base forfeiture amount for failure to file required forms or information (e.g., failure to file an antenna registration form) is \$3,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to post the antenna structure registration number.²¹ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.²²

16. Application of the base amounts to SpectraSite’s violations results in an initial proposed forfeiture of \$3,000 for the failure to register an antenna structure, a forfeiture of \$2,000 for each of the two instances of violations of the ASR posting rules, and a forfeiture of \$10,000 for each of the three instances of violations for failure to replace or repair lights, automatic indicators, automatic controls, and alarms systems as soon as practicable. Thus, the total base forfeiture amount for all of SpectraSite’s violations is \$37,000.

17. We are concerned with the pattern of apparent violations here. We have previously stressed the importance of full compliance with the antenna structure rules because of the potential danger to air traffic safety, including the rules designed to enable us to readily locate antenna structure owners.²³ In this case, we find SpectraSite’s failure to replace or repair lights, automatic indicators, automatic controls, and alarms systems for months a serious threat to air traffic safety.

18. We are particularly troubled that SpectraSite continues to violate these rules despite receiving two forfeiture assessments within the last thirteen months for eight instances of failure to comply with the antenna structure rules. The prior forfeiture actions put SpectraSite on notice that the Commission considers violations of the antenna structure construction, marking, and lighting rules to be serious safety-related infractions, yet SpectraSite apparently failed to take adequate steps to ensure its future compliance in this area. The new violations not only include two new instances of ASR posting violations, but three very serious violations of the antenna structure lighting rules. SpectraSite’s continuing violation of the antenna structure requirements evinces a pattern of non-compliance with and apparent disregard for these safety-related rules. Accordingly, we believe a significant upward

¹⁸ 47 U.S.C. § 503(b)(2)(D).

¹⁹ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁰ 47 C.F.R. § 1.80.

²¹ The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “any omission of a specific rule violation from the [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.” *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

²² *American Tower Corp.*, 16 FCC Rcd 1282, 1284-85 (2001) (“*American Tower*”).

²³ *Id.* at 1282-85.

adjustment of the base forfeiture amount is warranted.²⁴ Applying the *Forfeiture Policy Statement* and statutory factors (e.g., nature, extent and gravity of the violation and the history of prior offenses)²⁵ to the instant case, we conclude that it is appropriate to triple the base forfeiture amounts for SpectraSite's apparent violations. Therefore, we find SpectraSite apparently liable for a forfeiture in the amount of \$111,000.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, SpectraSite Communications, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of one hundred and eleven thousand dollars (\$111,000) for willfully violating Section 303(q) of the Act and willfully violating Sections 17.4(a)(2), 17.4 (g), and 17.56(a) of the Rules.

20. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, SpectraSite Communications, Inc. SHALL PAY the full amount of the proposed forfeiture amount or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

21. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232940004 and FRN # 0006-1525-73. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

22. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include the NAL/Acct. No. 200232940004.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

24. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent by Certified Mail Return Receipt Requested to SpectraSite Communications, Inc., 100 Regency Forest Drive, Cary, North Carolina 27511.

FEDERAL COMMUNICATIONS COMMISSION

²⁴ Cf., *American Tower*, 16 FCC Rcd at 1285 (base forfeiture amount doubled); *TeleCorp Communications, Inc.*, 16 FCC Rcd 805, 807 (Enf. Bur. 2001) (base forfeiture amount doubled).

²⁵ See also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁶ See 47 C.F.R. § 1.1914.

Marlene H. Dortch
Secretary

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN ABERNATHY**

In re: SpectraSite Communications Inc. – Notice of Apparent Liability for Forfeiture; AT&T Wireless Services Inc. – Notice of Apparent Liability for Forfeiture

I support today's decisions to render substantial notices of apparent liability against wireless tower owners who have violated our tower marking and lighting requirements. I write separately to call attention to the excellent and important work of our field offices in these stepped up enforcement efforts.

Our field agents are our grass roots front line of defense against unlawful spectrum and tower safety practices. As a federal regulatory agency, we necessarily operate with most of our personnel in Washington DC. However, for most Americans, the FCC they see and hear and call upon for help work in the dozens of field offices the Commission operates around the country. The Commission has unique responsibilities for enforcement of interference rules, tower safety, and unlicensed radio operations, among others. These NALs are one indication of this important work. In three regional offices and twenty five field offices round the country, 109 agents with extensive technical and enforcement expertise work tirelessly for a fraction of what they could earn in the private sector. Since January 2001 in the tower safety area alone, field agents have been integral in issuing 37 Commission and/or Enforcement Bureau NALs, forfeiture orders and consent decrees totaling well over \$600,000. Unfortunately, at times, the fine efforts of the field offices do not receive the recognition they deserve. I write separately in an effort to close this gap.